Supreme Court, U.S.
FILED

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No. ———

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

CHARLES G. STUMPF, JR.,
Petitioner,

v.

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, ST. TAMMANY PARISH, JEFFERSON PARISH, RONALD GOUX; REED INGRAM; FRANK SIMONE; RICHARD BLANKE; HUNTER WAGNER, JR.; WILDRED GRIFFIN, JR.; ROBERT SUTHERLIN,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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82 pp

QUESTION PRESENTED FOR REVIEW

Was the cross-appeal of petitioner frivolous warranting dismissal of his appeal of the summary judgment entered against him on his complaint filed, claiming violations of the Racketeer Influenced and Corrupt Organizations Act, for insufficient pleadings and imposing sanctions of double costs plus $1,500. upon petitioner's attorney?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles G. Stumpf, Jr., requests that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this action on February 20, 1998, granting respondents' motion for double costs and attorneys fees.

CITATIONS

The decisions of the federal courts are not reported in either the Federal Supplement or the Federal Reporter.

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on February 20, 1998. A petition for rehearing was not filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

UNITED STATES CODE AND LOUISIANA STATUTES

18 U.S.C. § 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.

18 U.S.C. § 1962. Prohibited activities

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more direetors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. § 1964. Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain (violations of section 1962 of this chapter by issuing appropriate orders, including, not not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of inocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and

the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

18 U.S.C. § 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substance Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1028 (relating to fraud and related activity in connection with identification documents), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relat-

ing to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), sections 1581-1588 (relating to peonage and slavery), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles, sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2318 (relating to trafficking in counterfeit labels for photorecords, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works), section 2319 (relating to criminal infringement of a copyright), section 2319A (relating to unauthorized fixation of and traffick-

ing in sound recordings and music videos of live musical performances), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11 (except a case under section 157 of this title), fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), punishable under any law of the United States, (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act, or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General

to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

FRCP Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction de-

pends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may so state as many separate claims or defenses as the party has regardless of consistency and wheher based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

FRCP Rule 9. Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

(h) Admiralty and Maritime Claims. A pleading or count setting forth a claim for relief within the admiralty and maritime jurisdiction that is also within the jurisdiction of the district court on some other ground may contain a statement identifying the claim as an admiralty or maritime claim for the purposes of Rules 14(c), 38(e), 82, and the Supplemental Rules for Certain Admiralty and Maritime Claims. If the claim is cognizable only in admiralty, it is an admiralty or maritime claim for those purposes whether so identified or not. The amendment of a pleading to add or withdraw an identifying statement is governed by the principles of Rule 15. A case that includes an admiralty or maritime claim within this subdivision is an admiralty case within 28 U.S.C. § 1292(a)(3).

FRCP Rule 56. Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatoies, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testmony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions

to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

FRAP Rule 38. Damages and Costs for Frivolous Appeals

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

LSA R.S. 34:§ 1652.1. Port and harbor police

The commission may, in its discretion, appoint, fix salaries of, and pay port and harbor police; said police to consist of any number of men of good character and citizens of the state, not under twenty-one years of age. Each of the port and harbor police so appointed shall furnish bond in a sum to be fixed by the commission at not less than one thousand dollars, conditioned on the faithful performance of his duties, and any person injured or damaged by any port or harbor police may sue upon said bond. The port and harbor police shall have, under the direction and control of the commission, the same power to make arrests, in and upon the property within the jurisdiction of the commission and approaches thereto, and to execute and return all criminal warrants and processes, as sheriffs of this state have, and shall under the same direction and authority, have all the powers of sheriffs as peace officers in all places and on all premises under the jurisdiction and control of the commission, and the streets and approaches thereto. Any persons arrested by officers of the commission and the return of all warrants

or processes served by said officers shall be forthwith surrendered or delivered to the criminal sheriff of the parish of Lafourche; provided this shall in no way deprive the sheriff or deputy sheriff in the parish of Lafourche from making arrests or from serving warrants or process of court in any such place or on any such premises. The commission shall make rules and regulations for the conduct, management and control of the port and harbor police, and shall, from time to time, enlarge, modify or change such rules and regulations in its discretion.

LSA R.S. 40:§ 1379. Duties and powers of police employees

A. The police employees of the division shall prevent and detect crime, apprehend criminals, enforce the criminal and traffic laws of the state, keep the peace and good order in the state in the enforcement of the state's police powers, and perform any other related duties imposed upon them by the legislature.

B. Police employees of the division are peace officers and, any provision of the law to the contrary notwithstanding, except R.S. 40:1386, they have, in any part of the state, the same powers with respect to criminal matters and the enforcement of the law relating thereto as sheriffs, constables, and police officers have in their respective jurisdictions. They have all the immunities and matters of defense now available or hereafter made available to to sheriffs, constables, and any police officers in any suit brought against them in consequence of acts done in the course of their employment.

C. Any warrant of arrest or other process issued by the legislature or either house thereof, or any court of the state may be served and executed by any police employee of the division in any part of the state according to the tenor thereof without endorsement.

LSA R.S. 49:§ 149.2. Capitol police constituted as peace officers; bond; jurisdiction

When discharging their duties on said state property or on the state capitol complex, capitol police are hereby

constituted as peace officers with the right to exercise the power of arrest and the power to transfer arrested persons to the sheriff of the parish wherein the arrest was made and shall have the authoity to carry weapons at all such times. Such pesons, officers, or guards shall be bonded in the amount of ten thousand dollars in the exercise of their functions and the premiums on such bonds shall be paid from the budget of the superintendent of state buildings and grounds. However, nothing herein shall be construed so as to limit the jurisdiction of the capitol police to only those buildings and grounds under the supervision of the superintendent of the state buildings and grounds or the state capitol complex, but such jurisdiction shall extend to all state owned or leased buildings and grounds when requested by a state agency in or on such property.

L.S.A. R.S. 17:§ 1805. Authority of university or college police officer

A. (1) Those persons who are university or college police officers responsible for maintaining general order and exercising police power on the campus of a state-supported or a private college or university shall be designated as university or college police officers.

(2) Each such person named as a police officer by the president of the college or university shall be commissioned as a university or college police officer by the Department of Public Safety and Corrections or as provided in Subsection E of this Section. Such commission shall remain in force and in effect at the pleasure of the employing college or university.

(3) While in or out of uniform, these police officers shall have the right to carry concealed weapons and to exercise the power of arrest when discharging their duties on their respective campuses and on all streets, roads, and rights-of-way to the extent they are within or contiguous to the perimeter of such campuses. In the discharge of their duties on campus and while in hot pursuant on or off the campus, each university or college police officer may exercise the power of arrest.

(4) Each such police officer shall execute a bond in the amount of ten thousand dollars in favor of the state for the faithful performance of his duties. The premium on the bond shall be paid by the employing institution.

B. Any person arrested by a college or university police officer, in the exercise of the power hereinabove granted, shall be immediately transferred by such officer to the custody of the sheriff or city police wherein the arrest occurs.

C. On and after January 1, 1975, no person shall be commissioned as a college or university police officer, unless prior to such commissioning the person has, as a minimum requirement, completed and graduated from the six-weeks program of the Basic Law Enforcement Training Academy of Louisiana State University and Agricultural and Mechanical College or possesses equivalent training or experience.

D. Upon authorization by the chief administrative officer of the educational institution, a college or university police officer shall have authority to discharge his duties off campus as follows:

(1) If engaging in intelligence gathering activity.

(2) When investigating a crime committed on campus.

(3) When transporting prisoners in furtherance of duties as set forth in this Section.

(4) When transporting money, securities, or other valuables on behalf of the college or university.

(5) While providing security or protective services for visiting dignitaries to the college or university both on and off the campus.

(6) If specifically requested by the chief law enforcement officer of the parish or city.

E. Notwithstanding any of the provisions of this Section to the contrary, any state supported or private college or university situated within the territorial limits of any municipality having a population in excess of two hundred fifty thousand persons may, at the option of said

college or university, have its campus police officers commissioned as university or college police officers by such municipal or city police department, rather than the Department of Public Safety, upon complying with the requirements and regulations as may be prescribed by said municipal or city police department for the commissioning of special officers. Such commissions issued by a municipal or city police department shall confer upon such campus police officers all rights and privileges as are enumerated in this Section with respect to officers commissioned through and by the Department of Public Safety; provided, however, that such officers shall not be entitled to supplemental pay for municipal police officers.

F. Notwithstanding any provision of this Section to the contrary, on July 1, 1991 and thereafter, no person shall be commissioned as a university or college police officer by the Department of Public Safety and Corrections or as otherwise provided in Subsection E of this Section until there has been a determination made by the commissioning authority that the particular public or private college or university naming the police officer is in compliance with the provisions of R.S. 17:3351(C), or, in the case of a private college or university, is in compliance with substantially similar requirements adopted by the particular institution, relative to reporting certain statistics on reported criminal offenses, adopting certain written security policies and procedures, and publishing certain such policies and procedures.

G. Each person who is employed as a full-time college or university police officer may carry a concealed handgun, whether in uniform or not and whether on or off duty, provided the person meets the requirements for college and university police officers set forth in this Section and is certified by the Council on Peace Officer Standards and Training.

LSA R.S. 47:820.5.1, Toll Violations

A. *In the exercise of the toll powers of the Crescent City Connection Division and the Greater New Orleans*

Expressway Commission, the Crescent City Connection Division and the commission are authorized to exercise so much of the police powers of the state as shall be necessary to maintain the peace and accomplish the orderly handling of authority. The division and the commission shall adopt such rules and regulations for the method of taking tolls and the employment and conduct of toll takers and other operating employees as the division or the commission, in its respective discretion, may deem necessary.

B. No motor vehicle shall be driven or towed through a toll collection facility, where appropriate signs have been erected to notify traffic that it is subject to the payment of tools beyond such sign, without payment of the proper toll. *In the event of nonpayment of the proper toll, as evidenced by video or electronic recording, the registered owner of such vehicle shall be liable to make prompt payment to the division or to the commission of the proper toll and an administrative fee of twenty-five dollars to recover the cost of collecting the toll.* Such administrative fee shall be waived if the toll is paid within seventy-two hours of the violation. *Upon failure to pay the proper toll and administrative fee to the division or to the commission after notice thereof and within the time designated in such notice, the registered owner shall be cited for a violation of R.S. 14:71.2 and, upon conviction, shall be subject to the payment of a fine of not less than fifty dollars nor more than one hundred dollars for each and every violation of this Section* and any other fine or penalty that may be prescribed by law for such violations. *In prosecution of an offense, proof that the vehicle was operated in violation of this Section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation.* The court of the local jurisdiction in which the violation occurred shall be authorized to assess and collect such fine, in addition to any court costs, provided that the court shall also collect the proper toll and administrative fee and forward such

toll and fee to the division or to the commission as applicable.

* * * *

D. *The following procedures shall be taken for the collection of tolls and civil penalties under this Section:*

(1) The division or the commission, as applicable shall send a notice of liabiilty by first class mail to a person alleged to be liable as a registered owner of the vehicle at the address shown on the records of the Louisiana Department of Public Safety and Corrections, office of motor vehicles, no later than sixty days after the alleged failure to pay. A manual or automatic record of the mailing prepared in the ordinary course of business of this division or of the commission is prima facie evidence of the mailing of the notice.

(2) A notice of liability shall include the name and address of the person alleged to be liable as a registered owner for the failure to pay a toll under this Section, the amount of the toll not paid, the registration number of the vehicle involved, the toll collection facility at which the failure occurred, the date and the approximate time of the failure, and any additional administrative fees due.

(3) The notice shall also include a warning that failure to contest in the manner provided within thirty days is an admission of liability and a waiver of available defenses and advise the registered owner that failure to contest or failure to pay shall result in the forwarding by the division or by the commission of the violation to the district attorney for prosecution under R.S. 14:71.2.

(4) Should the registered owner fail to contest or pay in the manner provided in the notice of liability, within thirty days the division or commission, as applicable, shall serve upon the registered owner, by certified mail, a demand for payment of all tolls and costs provided by this Section.

(5) The demand for payment shall also advise the registered owner that the penalties provided by law have become final and failure to pay within thirty days of receipt of the demand for payment will cause the division or the

commission to forward the violation to the appropriate district attorney for prosecution under R.S. 14:71-2.

LSA R.S. 40:1379.1

A. The superintendent of state police shall be authorized to issue at his discretion a special officer's commission from the division of state police. Any person who receives a special officer's commission must display need for statewide police power and power to arrest, be bonded, and adhere to all restrictive stipulations as set forth in the special officer's commission.

* * * *

I. Special officer commissions and concealed handgun permits shall be valid only for a period of one year from the date of their issuance.

LSA R.S. 48:1101, Crescent City Connection Police

(2) CRESCENT CITY CONNECTION police shall have, under the direction and control of the secretary, the same powers to make arrests and the power to execute and return all warrants and processes as sheriffs of the parishes of Jefferson and St. Bernard and police officers of the city of New Orleans and the city of Gretna, in and upon the Mississippi River Bridge Authority's property occupied by the CRESCENT CITY CONNECTION, the Huey P. Long Bridge, and the ferries and the public ways contiguous thereto. Such police officers, under the same direction and control of the secretary, shall have all other powers of sheriffs of the parishes of Jefferson and St. Bernard and police officers of the city of New Orleans and the city of Gretna, as peace officers, in all places and on all promises under the jurisdiction and control of the CRESCENT CITY CONNECTION, the Huey P. Long Bridge, and the ferries and the public ways contiguous thereto. Notwithstanding the other provisions of this Subsection, the jurisdiction of the CRESCENT CITY CONNECTION police on the Pontchartrain Expressway shall not extend beyond the South Broad Street Overpass in the city of New Orleans.

LSA C.C.R.P. Art 204, Execution of Warant

The warrant shall be directed to all *peace officers* in the state. *It shall be executed only by a peace officer,* and may be executed in any parish by any peace officer having authority in the territorial jurisdiction where the person arrested is found, or by any peace officer having authority in one territorial jurisdiction in this state who enters another jurisdiction in close pursuit of the person arrested. (Emphasis added)

CONCISE STATEMENT OF THE CASE

The jurisdiction in the court of first instance is premised upon 18 U.S.C. § 1964(A), (C) and (D) (Racketeer Influenced and Corrupt Organizations). Federal question is also based on 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1337 (commerce). The court has jurisdiction of the state law claims under the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367.

On November 1, 1996, plaintiff, Charles G. Stumpf, Jr. (hereafter simply referred to as Stumpf) filed this civil action which was brought to recover damages stemming from illegal activities prohibited by the Racketeer Influenced and Corrupt Organiaztions Act (18 U.S.C. § 18 U.S.C. § 1961 et seq.) This civil action also included pendant state court claims for conspiracy to assault, intentional inflicting of emotional distress, intentional interference with prospective business relations, false imprisonment and malicious prosecution. (Appendix p. 18a) The complaint named as defendants the Greater New Orleans Expressway Commission (hereafter referred to as GNOEC), the parishes of St. Tammany and Jefferson as the creators and sole shareholders of GNOEC) (which defendants are hereafter to referred to simply as PARISHES.); as well as Ronald Goux, Reed Ingram, Frank Simone, Richard Blank, the appointed commissioners of the GNOEC hereafter referred to as commissioners; additionally, Hunter Wagner, Jr. the General Manager of GNOEC and Wilford Griffin, Jr., the Assistant General Manager of GNOEC (hereinafter referred to as the man-

agers) and Robert Sutherlin, the Chief of Police of GNOEC (hereinafter referred to as the Chief of Police). Promptly thereafter, on November 21, 1996, Stumpf filed his answers to the standing RICO order required by the United States District Court for the Eastern District of Louisiana. (Appendix p. 29a)

The GNOEC, its commissioners, managers, and chief of police filed their answer on January 15, 1997, after having requested and been granted extension of time to file their answer. On January 10th and January 23rd, 1997, the PARISHES filed each of thier motions to dismiss pursuant to FRCP 12(b)(6), the substance of each motion being that the PARISHES, as shareholders, could not be responsible for the acts of the corporation.

On February 4, 1997, Stumpf filed his opposition to the Motion to Dismiss of the Parish of Jefferson. Defendant, the Parish of St. Tammany, filed an identical motion to dismiss and an identical opposition was filed by Stumpf. The ruling on each motion by the United States District Judge was identical (Record pp. 131-134 & 126-129). Those rulings denied the motions with the right of the PARISHES to renew as a Motion for Summary Judgment. The ruling also directed Stumpf to file a supplemental complaint to allege any facts that he has knowledge of which would be sufficient to state a claim for shareholder liability of the PARISHES. The ruling also restricted (or directed) ". . . Any party may conduct discovery relative to this issue prior to May 1, 1997 . . ." Thus, discovery during this time frame was necessarily focused on the issue of liability of the PARISHES as shareholders; however, no formal discovery was pursued by any of the parties.

On April 2, 1997, Stumpf filed his amended complaint to state with particularity the facts upon which the liability of the PARISHES would be established. (Appendix p. 38a)

The GNOEC filed its Motion for Summary Judgment and for Rule 11 Sanctions on April 23, 1997. The PARISHES renewed their motions and joined in the mo-

tion of GNOEC. Stumpf filed his opposition to the Rule 56 Motion for Summary Judgment on May 19, 1997.

On June 3, 1997, United States District Court Judge granted defendants' Motion for Summary Judgment and denied their motion for sanctions. The order was entered on June 5, 1997.

On July 1, 1997, a Notice of Appeal was filed by GNOEC, the Commissioners, the Management and the Chief of Police which appeal was for that part of the ruling which denied sanctions. On July 9, 1997, Stumpf filed his Notice of Cross Appeal (Appendix p. 13a) in which Stumpf is appealing the ruling of the District Court granting defendants' Motion for Summary Judgment which thereby denied recovery on Stumpf's claim for damages stemming from illegal activities prohibited by the Racket eer Influence and Corrupt Organization Act, as well as the pendant state law claims. The Parish of Jefferson filed its Notice of Appeal on July 15, 1997, seeking to appeal the denial of sanctions and on July 24, 1997, the Parish of St. Tammany filed its Notice of Appeal seeking to appeal the denial of Rule 11 Sanctions.

The G.N.O.E.C. filed a motion in the Court of Appeals seeking damages/sanctions claiming petitioner's appeal to be frivolous. Petitioner filed his opposition (Appendix p. 15a) After briefing was completed by all parties, the United States Court of Appeals, on February 20, 1998, affirmed the denial of FRCP 11(c) sanctions, dismissed the cross-appeal of petitioner and granted respondents FRAP 38 motion for double costs awarding $1500 in attorney fees.

The peace officer status is the gravamen of this case because it is mandatory that peace officers execute arrest warrants, a status the GNOEC police did not enjoy when they arrested Mr. Stumpf. LSA C.CR.P. Art. 204, Execution of Warrant.

A peace officer is specifically defined by the Louisiana Legislature to be:

> (1)(a) *"Peace Officer" means any full-time employee* of the state, a municipality, a sheriff, or other public agency, *whose permanent duties actually include* the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, or highway laws of this state, *but not including any elected or appointed head of a law enforcement department.* (Emphasis added) LSA R.S. 40:2402.

The District Judge failed to follow the Erie doctrine which requires that the substantive law to be applied by the federal courts concerning the distribution of powers in a state, is that state's law. *Erie Railroad Company v. Tompkins,* 58 S.Ct. 817, 304 U.S. 64, 82 L.Ed. 1188. With regard to interfacing local law enforcement authorities with the state police the Louisiana Legislature has enacted LSA-R.S. 40:1388, which provides:

> The mayor or chief police officer of any municipality and *the sheriff of any parish* within this state may contract with the department, acting on behalf of the state, for the regular assignment of an agreed number of employees of the division of state police to the municipality or parish, as the case may be, so as to provide police protection therein and to enforce both state laws and local ordinances, in consideration of the payment by the municipality, parish, or other unit of government of a sum agreed upon by them and the department. The department may enter into such a contract or contracts or may refuse to do so for the good of the service.
>
> Any police employee of the division so assigned shall continue to have all the powers and duties granted and bestowed in this Subpart but he shall not be subject to the restrictions contained in R.S. 40:1386 and 40:1387 with reference to the municipality to which he has been assigned.
>
> The department may, at all times, withdraw any employee of the division so assigned and assign another employee in his place. (Emphasis added.)

Clearly the Louisiana Legislature recognizes the *Sheriff* as the provider of police protection in a parish as opposed to the governing authority, an important distinction not recognized by the courts below.

The Supreme Court of Louisiana has recently explained the process and emphatically pronounced the sacred principles of delegation to the executive branch of legislative authority. *State v. All Pro Paint & Body Shop, Inc., et al.*, 639 So.2d 707, 93-KA-1316, 7/5/94. In that case the Supreme Court of Louisiana confirmed its prior jurisprudence:

> "Recognizing that the Louisiana Constitution unequivocally mandates the separation of powers among the three branches of state government, this court in delegation cases traditionally has distinguished between delegations of purely legislative authority, which necessarily violate the separation of powers, and delegations of ministerial or administrative authority, which do not . . . (639 So.2d at p. 711) a delegation of authority to an administrative agency is constitutionally valid if the enabling statute (1) contains a clear expression of legislative policy, (2) prescribes sufficient standards to guide the agency in the execution of that policy, and (3) is accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency . . . (639 So.2d at p. 712). Likewise, courts will not impute meanings which will lead to absurd results or extend statutes to situations which the legislature never intended should be covered thereby . . . (639 So.2d at p. 716). Of course, implicit in the constitutional prohibition against delegations of legislative power is the requirement that the standards which must accompany delegations must not be unlimited, unreasonable, or permit arbitrary action by the administrative body . . . (639 So.2d at p. 717).

The Supreme Court of Louisiana requires well defined standards that must accompany delegations of legislative power, one of which is police power. With regard to delegating power to the superintendent of state police to

issue a special officer's commission (LSA-R.S. 40:1379.1 *infra*), the standard of concern in this appeal is. ". . . Any person who receives a special officer's commission *must display need for statewide police power . . .*" (emphasis added)

The interpretation of that section by the United States District Judge to extend the application of that statute ". . . To fulfill that responsibility, the Louisiana Office of State Police directly commissions the GNOEC police to exercise its authority." (Record p. 276) leads to absurd results by invoking the statute in situations which the Legislature has itself expressed its delegation of limited police powers to the G.N.O.E.C., prescribed standards to guide the use of the powers and accompanied its delegation by adequate procedural safeguards to prevent against abuse of those limited powers.

The Legislature provided standards for toll violations addressing both the Crescent City Connection and the GNOEC together. LSA-R.S. 47:820.5.1.

However, the Legislature clearly intended and specifically differentiated in its delegation of the police power of the State to each. The power granted to the Crescent City Connection Police is delegated by LSA-R.S. 48:1101.1.B.(2), making them equal in power to the sheriffs of the parishes, while at the same time withheld those powers from the G.N.O.E.C.

The special statute enacted by the Louisiana Legislature for the particular purpose of establishing standards for the GNOEC in the exercise of its toll powers, LSA-R.S. 47:820.5:1, which only authorizes the issuance of a citation pursuant to LSA-R.S. 14:71.2, prevails over the general statute, LSA-R.S. 40:1379.1, authorizing the superintendent of state police to issue a special officer's (singular tense) commission *Abbott v. Parker*, 249 So.2d 908 (La., 1971).

Likewise, LSA-R.S. 48:1101.1.B.(2) authorizes the CRESCENT CITY CONNECTION to exercise the *powers of peace officers* with jurisdiction and control over the

Huey P. Long Bridge. The Louisiana Legislature could have but did not delegate these same powers to GNOEC and, instead, the powers of peace officers was withheld.

The answer is really simple. Every time the Louisiana Legislature delegated police power of a peace officer, the Louisiana Legislature stated so *IN PLAIN ENGLISH . . . NO LAWYER REQUIRED.* The GNOEC cannot point to the plain English, as for instance:

(1) LSA R.S. 49:149.2 Capitol police constituted as peace officers;

(2) LSA R.S. 34.1652.1 Port and harbor police;

(3) LSA R.S. 40:1379 Police employees of state police;

(4) LSA R.S. 17:1805 Authority of university or college officer.

ARGUMENT AMPLIFYING REASONS

Petitioner does not need to plead, nor must he prove, an economic motive to maintain his RICO action in the United States District Court. "We have held that "at the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." *National Organization for Women, Inc. v. Scheidler, et al.,* 510 U.S. 249, 114 S.Ct. 798, 127 L.Ed. 2d 99, This Honorable Court has further stated that ". . . The limits of the relationship and continuity concepts that combine to define a RICO pattern, and the precise methods by which relatedness and continuity are its threat may be proved, can not be fixed in advance with such clarity that it will always be apparent whether in a particular case a 'pattern of racketeering activity' exists. The development of these concepts must await further cases, absent a decision by Congress to revisit RICO to provide clearer guidance to the Act's intended scope" . . . *HJ Inc. et al. v. Northwestern Bell Telephone Company, et al.,* 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed. 2d 195. The concurring opinion in that case suggests that clarity and predictabiilty

in RICO's civil applications are lacking stating, ". . . That the highest Court in the land has been unable to derive from this statute anything more than today's meager guidance bodes ill . . ."

In a PER CURIAM opinion of this Honorable Court, *United States v. Robinson,* 514 U.S. 669, 115 S.Ct. 1732, 131 L.Ed. 2d 714, instructed that ". . . The 'affecting commerce' test was developed in our jurisprudence to define the extent to Congress's power over purely intrastate commercial activities that nonetheless have substantial interstate effects". The commercial activities of the G.N.O.E.C. in the operation of the causeway bridge linking interstate 10 with interstate 12 certainly have substantial interstate effects, particularly the operation of a police force which makes arrests and incarcerates persons who travel across that bridge.

In dissenting opinions of this Honorable Court, Mr. Justice White, *Pryva v. United States,* 498 U.S. 924, 111 S.Ct. 305, 112 L.Ed. 2d 258, and again in *Reddy v. Litton Industries, Inc.,* 502 U.S. 921, 112 S.Ct. 332, 116 L.Ed. 2d 272, recognized that this Honorable Court has not addressed the question of standing relative to a conspiracy claimed under RICO which did not allege injury from overt acts which themselves are prohibited in the RICO statute. Recently, in *Salinas v. United States,* 118 S.Ct. 469, 139 L.Ed. 2d 352, this Honorable Court affirmed the principle that the RICO conspiracy statute broadened conspiracy coverage by omitting the requirement of an overt act stating that ". . . So long as they share a common purpose, conspirators are liable for the acts of their co-conspirators . . . It makes no difference that the substantive offenses under sub-section (c) require two or more predicate acts. The interplay between subsections (c) and (d) does not permit us to excuse from the reach of the conspiracy provision an actor who does not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense . . ."

The thread which weaves through the entire RICO statute can be particularly noticed by the use of the word

"extortion". The word is used in the text of the RICO statute itself, as well as in the Hobbs Act. That act of Congress, 18 U.S.C. § 1951 (b)(2) defines "the term 'extortion' means the obtaining of property from another, with his consent induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right." The issuance of special officer commissions to create an unlawful police force clearly falls within that definition in its most simple terms, because an arrest followed by incarceration obtains the property from another, specifically, the clothes off of his back.

The petitioner calls the attention of this Honorable Court to Its decision in the case of *McKnight v. General Motors Corporation,* 511 U.S. 659, 114 S.Ct. 1826, 128 L.Ed. 2d 655, a PER CURIAM opinion recognizing that imposing sanctions on petitioner's attorney was not proper because filing an appeal was the only way petitioner could preserve the issue pending a possible favorable decision by this Honorable Court. The same is true of this case. The RICO statute is a particularly difficult one and no attorney should be sanctioned for preserving the issue for his client pending a possible favorable decision by the Supreme Court of the United States.

The complaint and the amended complaint when fairly read also shows that Stumpf has successfully pleaded a civil conspiracy in that the COMMISSIONERS and the PARISHES conduct the affairs of the enterprise through the pattern of racketeering activity. As such, the PARISHES and the COMMISSIONERS conspire to maintain the existence of an unlawful police department.

Rule 56(e) of the Federal Rules of Civil Procedure provides mandatory requirements when affidavits are used to support a Motion for Summary Judgment. Those mandatory requirements are: (1) Shall be made on personal knowledge; (2) Shall set forth such facts as would be admissible in evidence; and, (3) Shall show affirmatively that the affiant is competent to testify to the matter stated therein.

Nowhere does Federal Rule of Civil Procedure 56(e) authorize the use of a verification of facts presented in an attorney's memorandum in support of the motion. (*Record p. 64*) *Automatic Radio Mfg. Co. v. Hazeltine Research Inc.*, 70 S.Ct. 894, 896, 339 U.S. 827, 831, 94 L.Ed. 1312 (1950).

Likewise, the affidavit of Robert B. Sutherlin makes statements which could only be given weight by the court if those statements were made by someone in high office with the Louisiana Department of Public Safety, Division of State Police. For instance, in statement No. 4 (*Record p. 83*) Mr. Sutherlin, the chief, testifies that his police officers act in lieu of the State Police and with full authority of the State Police. The chief is not competent to describe a legal relationship, if any exists, between the GNOEC police and the Louisiana Department of Public Safety, Division of State Police. For the affidavit to carry any weight in support of a Motion for Summary Judgment, the affidavit should have come from the person who issued the special commissions. Query: Why did the affidavit not originate from the Division of State Police? The affidavit of Sutherlin as to that fact considered by the judge in his ruling is rank hearsay. As such the affidavit does not state evidence which will be admissible at trial. The affidavit does not satisfy Federal Rule of Civil Procedure 56(e); accordingly, the granting of the Summary Judgment in reliance of hearsay testimony in an affidavit was error.

CONCLUSION

Mr. Stumpf claims that he has been injured by the operation of unlawful activities of the police force of the Greater New Orleans Expressway Commission. The pleadings which he has filed are sufficient under the Federal Rules of Civil Procedure. Accordingly, the judgment of the district court granting GNOEC's Motion for Summary Judgment should be reversed and the case remanded for trial on the merits.

Respectfully submitted,

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Attorney for Petitioner

APPENDIX

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APPENDIX

[Filed Feb. 20, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30678
Summary Calendar

CHARLES G. STUMPF, JR.,
Plaintiff-Appellee,
Cross-Appellant-
Cross-Appellee,

versus

GREATER NEW ORLEANS EXPRESSWAY COMMISSION *et al.*,
Defendants,

ST TAMMANY PARISH, JEFFERSON PARISH,
Defendants-Cross Appellees-
Cross Appellants,

GREATER NEW ORLEANS EXPRESSWAY COMMISSION;
RONALD GOUX; REED INGRAM; FRANK SIMONE;
RICHARD BLANKE; HUNTER WAGNER, JR.;
WILFRED GRIFFIN, JR.; ROBERT SUTHERLIN,
Defendants-Appellants-
Cross-Appellees.

Appeals from the United States District Court
for the Eastern District of Louisiana
USDC No. 96-CV-3571

Before DUHE, DEMOSS, and DENNIS, Circuit Judges.

PER CURIAM: *

The Greater New Orleans Expressway Commission (GNOEC); GNOEC Chairman Robert Goux; GNOEC Commissioners Reed Ingram, Frank Simone, and Richard Blanke; GNOEC General Manager Hunter Wagner, Jr.; GNOEC Assistant Manager Wilfred Griffin, Jr.; and GNOEC Chief of Police Robert Sutherlin (collectively, the GNOEC Defendants); St. Tammany Parish; and Jefferson Parish appeal the denial of their motion for FED. R. CIV. P. 11 sanctions following the summary-judgment dismissal of a civil RICO complaint filed by Charles G. Stumpf, Jr. Stumpf's complaint sought treble damages for alleged violations of 18 U.S.C. § 1962; alleged claims under the Hobbs Act,18 U.S.C. § 1951, and the Interstate Travel in Aid of Racketeering Act, 18 U.S.C. § 1952; and alleged claims of unlawful arrest, false imprisonment, malicious prosecution, conspiracy to assault, intentional infliction of emotional distress, intentional interference with business relations, and slander. Stumpf has filed a cross-appeal challenging the dismissal of his complaint.

Having reviewed the record and the briefs of the parties we hold that the denial of Rule 11 sanctions was within the discretion of the district court. *Lulirama Ltd. v. Axcess Broad. Serv.*, 128 F.3d 872, 884 (5th Cir. 1997); *Thomas v. Capital Sec. Serv., Inc.*, 836 F.2d 866, 872 (5th Cir. 1988) (en banc) (interpreting former version of Rule 11). Stumpf's cross-appeal is frivolous and we dismiss it as such. *Khurana v. Innovative Health Care Sys., Inc.*, 130 F.3d 143, 149 (5th Cir. 1997); *Crowe v. Henry*, 43 F.3d 198, 203-06 (5th Cir. 1995); *see Howard v. King*, 707 F.2d 215, 21-20 (5th Cir. 1983)); 5TH CIR. R. 42.2.

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* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The defendants/cross-appellees' motion for an award of damages under Fed. R. App. P. 38 is GRANTED because the result of Stumpf's appeal is obvious and the arguments of error are wholly without merit. *Diaz v. Methodist Hosp.*, 46 F.3d 492, 498 (5th Cir. 1995). We award the defendants double costs and $1500 in attorney fees, to be borne by Stumpf's attorney, Stephen J. Caire. *See Ruiz v. Medina*, 980 F.2d 1037, 1038-39 (5th Cir. 1993).

DENIAL OF FED. R. CIV. P. 11(c) MOTION AFFIRMED; CROSS-APPEAL DISMISSED; FED. R. APP. P. 38 MOTION GRANTED.

[Filed Jun. 3, 1997]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 96-3571

Section: E/2

CHARLES G. STUMPF, JR.

versus

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, *et al.*

RULING OF DEFENDANTS' MOTION FOR SUMARY JUDGMENT AND FOR RULE 11 SANCTIONS

Defendants, Greater New Orleans Expressway Commission ("GNOEC"), Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr. and Robert Sutherlin move for summary judgment and for sanctions, pursuant to rules 56 and 11, Federal Rules of Civil Procedure. Co-defendants, Parish of St. Tammany and Parish of Jefferson both seek the same relief and have adopted the position taken by GNOEC *et al.* and their memoranda submitted. Plaintiff opposes the relief sought by all defendants.

GNOEC is a public body incorporated under Louisiana law for the purpose of constructing, operating, and main-

taining the Causeway Bridge, an expressway connecting the parishes of Jefferson and St. Tammany. GNOEC derives its powers from the Louisiana Constitution, several legislative acts, and its articles of incorporation.

In 1952, the State of Louisiana amended its state constitution to dedicate half of the "State Highway Fund Number Two" for the construction of the Causeway; authorize the issuance of bonds to construct the Causeway; and require the Highway Fund Number Two monies to be used exclusively to reduce both the principal and interest of the bonds until the indebtedness is fully repaid. *See* Louisiana Constitution of 1921, Article VI, § 22. The Louisiana Constitution of 1921, as amended, declared that the Causeway would become part of the state highway system upon completion; appropriated funds for the Causeway planning and construction; prohibited competing facilities within ten miles as long as GNOEC revenue bonds remained outstanding; restricted financing subject to state audit provisions; and declared that the Causeway would be owned by the State, toll-free after the bonds had been paid. *See* Louisiana Constitution of 1921, article VI, § 22(g)(5).

In 1954, Jefferson and St. Tammany Parishes created the GNOEC pursuant to the constitutional authority, as well as La. R.S. 33:1332. That statute authorizes parishes that have agreed to act jointly to create a joint commission for the purposes of administering the agreement. The corporate purpose, as set forth in its original Articles of Incorporation, was to construct operate, and maintain a toll bridge or causeway, and the requisite approaches, across Lake Pontchartrain as part of the state highway system.

The Causeway police are commissioned exclusively by the Office of State Police and the State Department of Public Safety and Corrections to exercise police powers while performing official duties with the GNOEC. Because the Causeway bridge is a component of the state highway

system, the state police are responsible for patrolling those bridges. To fulfill that responsibility, the Louisiana Office of State Police directly commissions the GNOEC police to exercise its authority.

On August 15, 1996, the Causeway Police arrested plaintiff, a former toll taker for GNOEC, charged him with theft of over $500.00 from the toll collections, and terminated his employment with GNOEC. At the time of the arrest, the Causeway Police took him to the lock-up at the St. Tammany Parish Sheriff's Office, where he stayed until he posted a $5,000.00 bond. In the wake of that arrest, plaintiff filed the instant law suit, alleging that he is entitled to damages under the Racketeer Influenced and corrupt Organizations Act (18 U. S. C. § 1962(c)) because the Causeway Police is allegedly an illegal police force.

In a RICO suit, if a defendant demonstrates the absence of a material fact concerning the existence of (I) a RICO *person,* (ii) predicate acts of *racketeering activity,* (iii) a *pattern* of racketeering activity, or (iv) an *enterprise,* then summary judgment is warranted, povided the legal analysis also favors the movants. *Landry v. Air Line Pilots Ass'l Intern. AFL-CIO,* 901 F. 2d 404 (5th Cir. 1990). In the instant case, it appears that no material issues of fact exist with regard to any of these elements. Plaintiff has failed to allege a RICO person separate from the enterprise; he has failed to allege any racketeering activity whatsoever; he has failed to demonstrate a pattern by alleging more than one predicate act. Therefore, defendants are entitled to summary judgment as a matter of law.

A viable claim under section 1962(c) requires proof of "(1) conduct (2) of an enterprise (3) through a pattern (4) of rackettering activity." *Ashe v. Corley,* 992 F. 2d 540 (5th Cir. 1993); *Sedima, S.P.R.L. v. Imrex Co.,* 473 U. S. 479, 496, 105 S. Ct. 3275, 3285, 87 L.Ed.2d 346 (1985). Plaintiff's complaint and answer to the RICO Standing Order reveal that he cannot state a claim for a

RICO violation. For example, he purports to limit his RICO claim to 18 U. S. C. § 1962(c), which requires the RICO person to be separate from the enterprise and does not include conspiracy. Yet, in the body of the complaint and answer to the RICO Standing Order, he readily admits that he alleges GNOEC to be both the RICO person and enterprise, and repeatedly accuses defendants of conspiring to extort and otherwise violate the law. Likewise, his claim that defendants have engaged in a *pattern* of racketeering activities are belied by his own version of the facts. In response to this Court's RICO Standing Order to list these predicate acts and describe the pattern, he simply described his own arrest on August 15, 1996—a single act, which as a matter of law, cannot constitute a pattern. Similarly, his allegations of extortion, which by definition would require some form of his coerced consent are not supported by any facts alleging such consent. The deficiences in his claims cannot be cured by ameding his complaint, nor can his apparent outrage with his arrest be converted into a RICO claim.

In his complaint, plaintiff limits his RICO claim to 18 U. S. C. § 1962(c). That subsection forbids any *person* employed by or associated with any *enterprise* from participating in or conducting the affairs of the enterprise through a pattern of racketeering activity. The Fifth Circuit has held that the RICO person and the RICO enterprise must be distinct. *Crowe v. Henry,* 43 F. 3rd 198, 205-206 (5th Cir. 1995); *Bishop v. Corbitt Marine Ways, Inc.,* 802 F. 2d 122, 123 (5th Cir. 1986). A person cannot be employed by or associate with himself under this subsection. The enterprise must be different than the person employed by it or associated with it.

Although plaintiff has not alleged a violation of 18 U.S.C. § 1962(d)—the conspiracy section of the RICO statute, he has used the term "conspiracy" throughout his complaint and in his response to this Court's RICO Standing Order. As a matter of law, plaintiff cannot

allege a conspiracy between GNOEC and its officers/employees. Such a claim would depend upon proof that the defendants, *i.e.*, GNOEC, its officers, and employees, conspired to violate section 1962(c). Just as GNOEC cannot employ or associate with itself, it cannot conspire to employ or associate with itself. This same conclusion was reached in *Ashe v. Corley*, 992 F. 2d 540 (5th Cir. 1993), affirming the grant of summary judgment dismissing RICO claims with the same deficiencies as the instant case.

Plaintiff stated in his answer to this Court's RICO Standing Order, item 5, that his arrest on August 19, 1996 was the only predicate act in the alleged pattern of racketeering. Moreover, in response to this Court's order to list specific statutes allegedly violated, he listed La. R.S. 14:67, Theft over Five Hundred Dollars ($500), which is the statute under which he was arrested. He did not allege that GNOEC, its officers or employees, violated any statutes in arresting him. A single transaction standing alone cannot support a RICO "pattern" which, by definition, requires *at least two* acts of racketeering activity—under section 1961 of Title 18. 18 U.S.C. § 1961. *Word of Faith World Outreach Center Church, Inc. v. Sawyer*, 90 F. 3d 118 (5th Cir. 1996); *Conkling v. Turner*, 18 F. 3d 1285, 1297 (5th Cir. 1994).

The Supreme Court explained in *H. J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989), that a plaintiff "must show that the racketeering predicates are *related*, and that they amount to or pose a threat of *continued criminal activity*." *Id.* at 239, 109 C. Ct. at 2900 (emphasis added). In the instant case, plaintiff has failed to articulate *any* criminal activity on the part of the defendants, much less has he stated two or more acts of continued and related criminal activity. He has made the conclusory allegation that the Causeway police are illegally commis-

sioned by the Louisiana State Police, citing La. R.S. 40:1379.1. However, that statute itself refutes this contention. As explained in the factual background, the Causeway is part of the state highway system and falls within the state police responsibility and jurisdiction. Under this statute the superintendent has broad discretion to issue a special officer's commission. *See* La. R.S. 40:1379.1(C). This discretion dovetails with the broad legislative extension of power to GNOEC in La. R.S. 47:820.5.1, which provides that GNOEC is authorized as follows:

> to exercise so much of the police powers of the state as shall be necessary to maintain the peace and accomplish the orderly handling of authority. The division and commission shall adopt such rules and regulation for the method of taking tolls and the employment and conduct of toll takers and other operating employees as the division or the commission in its respective discretion, may deem necessary.

Plaintiff, a former toll taker, was arrested by a Causeway police officer, duly commissioned by the state police, for theft of toll money which he was employed to collect on behalf of GNOEC. The need for state police power and the power to arrest could not be more obviously displayed or properly exercised than in the instant case. The arrest of plaintiff by the Causeway police does not constitute a predicate act or pose a threat of on-going criminal activity. It was simply a single, lawful transaction which cannot form the basis for a RICO claim.

Plaintiff alleges violations of 18 U.S.C. § 1951, the Hobbs Act, and 18 U.S.C. § 1952, the Interstate Travel in Aid of Racketeering Act. These acts prohibit the use of extortion or threats to obstruct interstate commerce, and travel in interstate commerce to commit "unlawful activity" such as extortion. For the purpose of these statutes, "extortion" means obtaining property from an-

other, *with his consent, induced by actual or threatened force, violence, or fear. Elliot v. Foufas,* 867 F. 2d 877 (5th Cir. 1989). Plaintiff does not allege that he consented to having GNOEC take his retirement benefits. On the contrary, he alleges that GNOEC retained those benefits without his consent.

Likewise, plaintiff cannot state a claim under the Hobbs Act or Travel Act because his arrest for theft of state toll collections does not have an effect on interstate travel. Proving that interstate commerce has been affected is critical because federal jurisdiction rests on that basis. *United States v. Box,* 50 F.3d 345 (5th Cir. 1995). Although the effect on commerce need only be slight, plaintiff has not shown any effect on interstate commerce by his arrest. For that same reason, he cannot state a violation of the Travel Act, 18 U.S.C. § 1952, which requires travel in interstate or foreign commerce or use of a facility in interstate or foreign commerce. *United States v. Monford,* 27 F.3d 137, 138 (5th Cir. 1994). His assertion that law enforcement activity by the Causeway police (other than issuing citations for toll violations) has a "chilling effect on interstate commerce" does not state an effect on interstate commerce.

Plaintiff's state law claims cannot stand alone. In addition to alleging RICO violations, plaintiff entitled his complaint to include "conspiracy to assault, intentional infliction of emotional distress, intentional interference with prospective business relations, and slander, false imprisonment, and malicious persecution." In his complaint, he alleged supplemental jurisdiction for these state law claims, but did not set forth any specific allegations in the body of the complaint. Moreover, in response to this Court's RICO Standing Order requesting a list of pendant state claims, he responded that the question was not applicable to the instant matter. Thus, if he has not withdrawn those claims, they will be dismissed for lack of jurisdiction along with the dismissal of his RICO claims.

Defendants further move that plaintiff and/or his counsel should be sanctioned for filing a frivolous RICO complaint. GNOEC had placed plaintiff and his counsel on notice of the deficiencies in his RICO complaint, in accordance with the Fifth Circuit's requirements as set forth in *Thomas v. Capital Securities Services, Inc.*, 836 F. 2d 866 (1988), explaining their view of the deficiencies set forth and urged counsel for plaintiff to dismiss the complaint before further costs would be incurred. In the RICO context, the Fifth Circuit has emphasized the particular importance of an attorney's responsibility to conduct a reasonable prefiling investigation, stating as follows:

> Given the resulting proliferation of civil RICO claims and the potential for frivolous suits in search of treble damages, greater responsibility will be placed on the bar to inquire into the factual and legal bases of potential claims or defenses prior to bringing such suit or risk sanctions for failing to do so.

Chapman & Cole v. Itel. Container International, 865 F. 2d 676, 685 (1989). GNOEC argues that plaintiff and his counsel could not have had an objectively reasonable basis for filing the RICO complaint since no RICO complaint can state a cause of action if it alleges only one predicate act as a "pattern", refers to conspiracies between a corporation and its employees, equates a RICO person with the RICO enterprise under 18 U.S.C. § 1962(c), or fails to state an effect on interstate commerce since even the most cursory review of the Fifth Circuit's jurisprudence would alert an attorney that his RICO complaint should not contain these errors.

Though the court considers plaintiff's complaint to be without merit, arguably novel, at this state of the proceedings sanctions appear to be improper, giving the benefit of the doubt to plaintiff and his counsel. It may be that plaintiff, should he persist in and pursue urging this matter, may be found to deserve sanctions. This will have

to be addressed in the future, but at this time this court will deny sanctions. Defendants' motion for summary judgment will be GRANTED and their motion for sanctions will be DENIED.

New Orleans, Louisiana, this 3rd day of June, 1997.

/s/ Marcel Livaudais, Jr.
MARCEL LIVAUDAIS, JR.
Senior United States District Judge

[Filed Jul. 9, 1997]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 96-3571
Section: E/2

CHARLES G. STUMPF, JR.

versus

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, *et al.*

NOTICE OF CROSS APPEAL

Notice is hereby given that the plaintiff, *Charles G. Stumpf, Jr.*, hereby cross appeals to the United States Court of Appeals for the Fifth Circuit, from the final judgment, an order signed on the 3rd day of June, 1997 and entered on the 5th day of June, 1997, which granted defendants', *Greater New Orleans Expressway Commission, Parish of St. Tammany, Parish of Jefferson, Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr.*, and *Robert Sutherlin*, Motion for Summary Judgment and thereby denied recovery on plaintiff's claims for damages stemming from illegal activities prohibited by the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. § 1961 et seq.), as well as, the state law claims for conspiracy to assault, intentional infliction of emotional distress, intentional interference with prospective business relations, false imprisonment and malicious prosecution. Plaintiff's cross

appeal is from the dismissal of plaintiff's complaint, both the original as well as Amended Complaint. Plaintiff's cross appeal includes all matters thus specifically pleaded to the merits.

Dated: July 9, 1997.

Respectfully submitted,

/s/ Stephen J. Caire
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Case No. 97-30678

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CHARLES G. STUMPF, JR.,
Plaintiff-Appellee
Cross-Appellant-
Cross-Appellee

v.

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, *et al.*,
Defendants

ST. TAMMANY PARISH, JEFFERSON PARISH,
Defendants-Cross Appellee-
Cross Appellants

GREATER NEW ORLEANS EXPRESSWAY COMMISSION; RONALD GOUX; REED INGRAM; FRANK SIMONE; RICHARD BLANKE; HUNTER WAGNER, JR; WILFRED GRIFFIN, JR; ROBERT SUTHERLIN
Defendants-Appellants-
Cross-Appellees

OPPOSITION TO MOTION FOR DAMAGES AND COSTS FOR FRIVOLOUS APPEAL

NOW INTO COURT, through undersigned counsel, comes *Charles G. Stumpf, Jr.*, Plaintiff-Appellee-Cross-Appellant-Cross Appellee, who opposes the Motion for Damages and Costs for Frivolous Appeal filed by the Greater New Orleans Expressway Commission, et al, defendants/cross-appellees for the following reasons:

1) The briefing schedule for the above numbered and entitled appeal is complete with all briefs having been timely filed, but for the reply brief of Stumpf in his posture as cross-appellant which is due on November 16, 1997.

2) This cross-appeal seeks review of the district court's granting of a Summary Judgment; accordingly, this court of appeals reviews the district court's grant of Summary Judgment de novo.

3) While the district court granted a Motion for Summary Judgment dismissing plaintiff's complaint, the substance of the district court's ruling suggests that plaintiff's complaint lacked the essential allegations to state a claim arising under the Racketeer Influenced and Corrupt Organization Act.

4) The original brief on behalf of Charles G. Stumpf, Jr. as Cross-Appellant was filed on September 29, 1997. Stumpf incorporates as his brief in support of his opposition to the Motion to Dismiss, by reference thereto, that entire brief which addresses all of the elements necessary for this Honorable Court to conclude that Stumpf's original complaint, together with the amended complaint, successfully plead RICO violations.

5) Stumpf has successfully shown in his district court pleadings the essential RICO elements;

   a) RICO person: The RICO persons are the Parish of St. Tammany and the Parish of Jefferson (PARISHES).

   b) ENTERPRISE: The RICO enterprise is the Greater New Orleans Expressway Commission (GNOEC).

c) PATTERN OF RACKETEERING: the pattern of racketeering is the unlawful police force formed by the COMMISSIONERS and PARISHES. The application for, acceptance of and use by each of several police officers of unlawful special officers commissions to operate a police force are the several predicate acts.

d) RACKETEERING INJURY: Stumpf's injuries arise from the pattern of racketeering, his arrest by G.N.O.E.C. police impersonating a peace officer. The arrest is not a single act, as suggested by counsel for G.N.O.E.C. An arrest requires a series of acts—detention, reading of rights, full physical custody, transportation, booking and incarceration, while impersonating a peace officer—itself a criminal offense in violation of LSA R.S. 14: 1121.

WHEREFORE, for the foregoing reasons and the authorities cited in the memorandum attached hereto, Charles G. Stumpf, Jr. prays that the motion for damages and costs, pursuant to Rule 38 of the Federal Rules of Appellate Procedure, by G.N.O.E.C., et al be denied.

Respectfully submitted,

/s/ Stephen J. Caire
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[Filed Nov. 1, 1996]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action 96-3571

CHARLES G. STUMPF, JR.

versus

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, PARISH OF ST. TAMMANY, PARISH OF JEFFERSON, RONALD GOUX, REED INGRAM, FRANK SIMONE, RICHARD BLANKE, HUNTER WAGNER, JR., WILFRED GRIFFIN, JR., AND ROBERT SUTHERLIN

CIVIL ACTION FOR TREBLE DAMAGES ARISING UNDER THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (18 U.S.C. § 1961 ET SEQ.) THIS IS ALSO A CIVIL ACTION FOR CONSPIRACY TO ASSAULT, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, INTENTIONAL INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS, AND SLANDER, FALSE IMPRISONMENT, AND MALICIOUS PROSECUTION

PRELIMINARY STATEMENT

1. This civil action is brought to recover damages stemming from illegal activities prohibited by the Racketeer Influenced and Corrupt Organization Act

(18 U.S.C. § 1961 et seq.). This is also a civil action for conspiracy to assault, intentional infliction of emotional distress, intentional interference with prospective business relations, false imprisonment and malicious prosecution.

JURISDICTION AND VENUE

2. The jurisdiction of this court is premised upon 18 U.S.C. § 1964 (A), (C) and (D) (Racketeer Influenced and corrupt organizations. Federal question is also based on 28 U.S.C. § 1337 (commerce). The court has jurisdiction of the state law claims under the doctrine of supplemental jurisdiction under 28 U.S.C. § 1367.

3. Venus is proper in this district under 18 U.S.C. § 1391 (B) and (C). All defendants transact business within this district. The acts alleged herein took place within this district.

PARTIES AND RELATIONSHIPS

4. The material times to this action are from August 15, 1996 and continue.

5. Plaintiff, *Charles G. Stumpf, Jr.*, is an individual who resides in the Eastern District of Louisiana, at 28423 Hwy. 40, Bush, LA, his date of birth is April 30, 1944, and his social security no. 438-64-3209.

6. Defendant, the *Greater New Orleans Expressway Commission,* was created as a corporation authorized by the provisions of R.S. 33:1321-33:1332. The name and title of the commission listed in its Articles of Incorporation is the Greater New Orleans Expressway Commission. The names and post office addresses of the incorporating parishes are: (1) Parish of Jefferson, Police Jury Office, The Courthouse, Gretna, LA; (2) Parish of St. Tammany,

Police Jury Office, The Courthouse, Covington, LA. The sole shareholders of this defendant corporation, which was created on the *20th day of October, 1954* by Articles of Incorporation of the Greater New Orleans Expressway Commission, are the Parish of Jefferson and The Parish of St. Tammany. A copy of the Articles of Incorporation of the Greater New Orleans Expressway Commission as it appears beginning on page 111 of the bond covenant is attached hereto as *Exhibit A*.

7. Defendant, the *Parish of Jefferson,* is one of two shareholders of the Greater New Orleans Expressway Commission.

8. Defendant, the *Parish of St. Tammany,* is one of two shareholders of the Greater New Orleans Expressway Commission.

9. Defendant, *Ronald Goux,* is the chairman of the Greater New Orleans Expressway Commission.

10. Defendant, *Reed Ingram,* is a member of the Greater New Orleans Expressway Commission.

11. Defendant, *Frank Simone,* is a member of the Greater New Orleans Expressway Commission.

12. Defendant, *Richard Blanke,* is a member of the Greater New Orleans Expressway Commission.

13. Defendant, *Hunter Wagner, Jr.,* is the General Manager of the Greater New Expressway Commission.

14. Defendant, *Wilfred Griffin, Jr.,* is the Assistant General Manager of the Greater New Orleans Expressway Commission.

15. Defendant, *Robert Sutherlin,* is the Chief of Police of the Greater New Orleans Expressway Commission.

16. Each of the defendant commissioners above named is a voting member of the Greater New Orleans Expressway Commission and does, in fact, vote at

its meetings when present. The defendants Hunter Wagner, Jr., and Wilfred Griffin, Jr., actively manage the operation of the Greater New Orleans Expressway Commission.

17. The defendant, Robert Sutherlin, is the Chief of Police and is a full time employee of the Greater New Orleans Expressway Commission and in that capacity operates the Causeway Police Force.

FACTS

18. On August 15, 1996 the plaintiff, Charles G. Stumpf, Jr., was arrested by the Causeway Police and charged by the Causeway Police with theft over $500.00 as a violation of R.S. 14:67.

19. The arrest of the plaintiff was under the direct supervision of defendant, Robert Sutherlin, Chief of Police, of the Greater New Orleans Expressway Commission, and the said defendant ordered that plaintiff be arrested and incarcerated.

20. The plaintiff was, in fact, arrested on August 15, 1996 by the Causeway Police Department and was transported to the lock-up of the St. Tammany Parish Sheriff's Office where he was falsely imprisoned and maliciously prosecuted requiring him to post a bond in the amount of $5,000.00 and is continuing to be subject to malicious prosecution with his arraignment set for November 6, 1996, at 9:00 a.m. in the 22nd Judicial District Court at Covington, LA.

21. The arrest of plaintiff by the Causeway Police Force of the Greater New Orleans Expressway Commission was a felony arrest.

22. The plaintiff, Charles G. Stumpf, Jr., did not, in fact, commit the crime for which he was falsely imprisoned.

23. The arrest was made without any eyewitness to theft and relied solely upon information and data generated by the computer of the Greater New Orleans Expressway Commission.

24. The computer of the Greater New Orleans Expressway Commission is now and has been malfunctioning since it was purchased, to such a degree that the Greater New Orleans Expressway Commission has on contract a full time computer specialist to respond to calls when the computer malfunctions.

25. The tolls collected by the toll collectors of the Greater New Orleans Expressway Commission are placed in a bag which is not secured and is available to be taken into custody by any of several individuals including the defendant, Robert Sutherlin the Chief of Police of the Greater New Orleans Expressway Commission, or any of his police officers to transport the bags from the North Shore to the South Shore where they ultimately are transported to a bank.

26. The bank teller opens the bag and accounts for the money which has been collected by the toll taker. The Greater New Orleans Expressway Commission, its commissioners, and its chief of police as well as the Parish of St. Tammany, and the Parish of Jefferson, rely upon the teller at the bank to count the money properly and give an accounting upon which they rely.

27. The defendants have knowledge that there have been mistakes in accounting by bank tellers, as well as malfunctioning of computers.

28. The Greater New Orleans Expressway Commission has a full time employee whose function is to make adjustments to the reports generated by the computer and can do so at any time.

29. Attached hereto and made a part hereof is a report which was presented to Mr. Carlo Palmere, the employee of the Greater New Orleans Expressway Commission, who makes the adjustments to the computer reports, by the plaintiff and on which plaintiff accounts for a discrepancy of $10.00, stating that he has himself placed his own money to balance his day's work. This exhibit is attached and marked *Exhibit B*, upon which is written "*you are a fool*". Upon information and belief, it is believed that Mr. Carolo Palmere wrote this phrase upon the report of the plaintiff which report is dated October 8, 1995.

30. Consequently, all defendants know or should have known that the plaintiff, Charles G. Stumpf, Jr., is an honest employee and rendered proper and reliable reports of unusual occurrences during his shift.

RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT

31. Plaintiff, Charles G. Stumpf, Jr., realleges paragraph 1-30.

32. This is a civil action brought by plaintiff, Charles G. Stumpf, Jr., against defendants the Greater New Orleans Expressway Commission, the Parish of St. Tammany, the Parish of Jefferson, Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr., and Robert Sutherlin, under the Organized Control Act of 1970, Racketeer Influenced and Corrupt Organizations, 18 U.S.C. § 1961 et seq.

33. Plaintiff, Charles G. Stmpf, Jr., is a "person" within the meaning of 18 U.S.C. § 1961 (3) and 1962 (C).

34. The Greater New Orleans Expressway Commission, the Parish of St. Tammany, the Parish of Jefferson, Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr., and

Robert Sutherlin are each "person" within the meaning of 18 U.S.C. § 1961 (3) and 1962 (C).

35. The defendant, the Greater New Orleans Expressway Commission, is an enterprise within the meaning of 18 U.S.C. § 1961 (4), and 1962 (C), which engaged in, or the activities of which affect, interstate commerce within the meaning of 18 U.S.C. § 1962 (C).

36. The defendants, Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr., and Robert Sutherlin, were employed by or associated with the enterprise referred to in the preceding paragraph and conducted or participated, directly or indirectly, in the conduct of the enterprise's affairs, through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961 (1), (A) or (B) and (5), that is,

    a. interstate travel and aid of the operation of an unauthorized and illegal police force, and;

    b. the execution of felony arrest warrants or the arrest of persons who committed a felony while such persons was traveling upon the causeway in interstate travel, such activity being unlawful, illegal and in violation of 18 U.S.C. § 1952 and 18 U.S.C. § 2.

37. The plaintiff has been injured in his business and property by reason of the violation of 18 U.S.C. § 1962 (c) committed by aforesaid defendants within the meaning of 18 U.S.C. § 1964 (c) in that the plaintiff was arrested and incarcerated unlawfully by the unlawful and illegal police force operated by the Greater New Orleans Expressway Commission, was falsely imprisoned by that police force, and has been subjected to, and is continuing to be subjected to, malicious prosecution.

38. Plaintiff has been further injured in his property by reason of his necessity to post a bond to secure his release from the false imprisonment and appear for arraignment on November 6, 1996.

39. Plaintiff has been further injured by the unlawful withholding of, by aforesaid defendants of monies due and owing to him.

CONSPIRACY TO VIOLATE THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION ACT

40. Plaintiff realleges paragraphs 1 through 39.

41. The aforesaid defendants conspired to violate 18 U.S.C. § 1962 (c) by consenting to the employment of defendant Robert Sutherlin as Chief of Police and to allow him to operate a police force and falsely imprison and maliciously prosecute persons in interstate commerce.

42. The aforesaid conspired to violate 18 U.S.C. § 1962 (C) by agreeing to conduct or participate in the affairs of the enterprise referred to in the preceding paragraph through a pattern of racketeering within the meaning of 18 U.S.C. § 1961 (1) (A) or (B) and (5), that is,

    a. extortion in violation of 18 U.S.C. § 1951 and 18 U.S.C. § 2, and;

    b. interstate travel in aid of extortion in violation of 18 U.S.C. § 1952 and 18 U.S.C. § 2.

    c. Accepting fines and forfeitures, or portions thereof

43. Plaintiff has been injured in his business and property by reason of the violation of 18 U.S.C. § 1962 (D), committed by the aforesaid defendants within the meaning of 18 U.S.C. § 1964 (C), in that monies due and owing him have been unlawfully withheld

and plaintiff has been deprived of monies necessary to purchase and post the bond in order that he be released from his false imprisonment, as well as the monies which he must spend to retain an attorney at law to defend him in the malicious prosecution which has been brought against him.

44. The plaintiff, has also been injured in his property by the loss of his job, having been fired by the Chief of Police, Robert Sutherlin, who has no authority to discharge an employee of the Greater New Orleans Expressway Commission.

CONSPIRACY TO EXTORT

45. Plaintiff realleges paragraphs 1 through 44.

46. The aforesaid defendants have formed a conspiracy to extort plaintiff's retirement benefits and retain same to the damage of the plaintiff and to inure to the benefit of the enterprise.

47. As a direct and proximate result of the overt acts committed and caused to be committed by the aforesaid defendants and in furtherance of the conspiracy, the plaintiff, Charles G. Stump, Jr., suffered severe emotional distress and mental anguish. In addition, monies due and owing to plaintiff were wrongfully withheld which has directly and proximately caused plaintiff to incur substantial expense to obtain payment of the monies to lose the use of his money from August 15, 1996, through the date of the complaint, and to forego other business opportunities during the period that these monies were unlawfully withheld.

INTENTIONAL INFLICTION OF EMOTION DISTRESS

48. Plaintiff realleges paragraphs 1 through 47.

49. The actions and threats of aforesaid defendants, acting both as agents of the enterprise and defendants, were willful, wanton and malicious. These threats caused plaintiff severe mental anguish and emotional distress by putting him in a state of fear and apprehension, which in turn, had a severe and detrimental effect upon his life and general well being and impaired his ability to effectively manage his affairs.

LIMITATION OF POLICE POWERS BY THE LOUISIANA LEGISLATURE

50. The legislature of the State of Louisiana has specifically limited the police powers of the Greater New Orleans Expressway Commission to toll violations by enacting R.S. 47:820.5.1, which only authorizes the issuance of a citation pursuant to R.S. 14:71.2.

TRIAL BY JURY

51. Plaintiff is entitled to and demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff demand that judgment be entered against each of the defendants, jointly and severally, in favor of the plaintiffs:

I. For compensatory damages for damage and injury to business or property in an amount as yet undetermined,

II. For damages for injury to business or property trebled in accordance with 18 U.S.C. § 1964 (c),

III. For damages for mental anguish and emotional distress,

IV. For punitive damages,

V. For reasonable attorney fees in accordance with 18 U.S.C. § 1964 (c), and

VI. For costs of investigation in an undetermined amount, trebled in accordance with 18 U.S.C. § 1964 (c), and

VII. For trial by jury.

Respectfully submitted,

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[Filed Nov. 21, 1996]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 96-3571

Section "E" (2)

CHARLES G. STUMPF, JR.

versus

GREATER NEW OLEANS EXPRESSWAY COMMISSION

ANSWERS TO STANDING RICO ORDER

NOW INTO COURT, through undersigned counsel, comes Charles G. Stumpf, Jr., plaintiff, who respectfully tenders the following answers to the Court's Standing Rico Order pursuant to the Federal Rule of Civil Procedure II, as follows:

1.

Plaintiff asserts that the defendants violated 18 U.S.C. Section 1962 (C), in that they acted in concert by participating in a pattern of racketeering activity.

2.

The defendant, The Greater New Orleans Expressway Commission, created as a corporation authorized by the provisions of LSA- 33:1321-1332, is an enterprise within the meaning of 18 U.S.C. Section 1961 (4), and 1962 (C), which engaged in, or the activities which affect, interstate commerce within the meaning of 18 U.S.C. Section 1962 (C). As such, it is a person within the meaning

of 18 U.S.C. Section 1961 (3) and 1962 (C), which, conspired with the co-defendants by consenting to the employment of defendant Robert Sutherlin as Chief of Police and allowing him to operate a police-force which falsely imprisons and maliciously prosecutes persons in interstate commerce. More particularly, the enterprise committed extortion in violation of 18 U.S.C. 1951 and 18 U.S.C. Section 2; and, interstate travel in aid of extortion in violation of 18 U.S.C. Section 1952 and 18 U.S.C. Section 2, by accepting fines and forfeitures or portions thereof.

Co-defendant, Jefferson Parish, is one of two shareholders of the Greater New Orleans Expressway Commission, and a person as defined within the meaning of 18 U.S.C. Section 1961 (3) and 1962 (C). Jefferson Parish conspired with co-defendants by consenting to the employment of Robert Sutherlin as Chief of Police and allowing him to operate a police-force which falsely imprisons and prosecutes persons in interstate commerce; and, committed extortion and interstate travel in aid of extortion, by accepting fines and forfeitures of portions thereof in violation of 18 U.S.C. Section 2, 1951, and 1952.

Co-defendant, St. Tammany Parish, is one of two shareholders of the Greater New Orleans Expressway Commission, and a person as defined within the meaning of 18 U.S.C. Section 1961 (3) and 1962 (C). St. Tammany Parish conspired with co-defendants by consenting to the employment of Robert Sutherlin as Chief of Police and allowing him to operate a police-force which falsely imprisons and prosecutes persons in interstate commerce; and, committed extortion and interstate travel in aid of extortion, by accepting fines and forfeitures or portions thereof in violation of 18 U.S.C. Section 2, 1951, 1952.

Co-defendants: Ronald Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr., and Robert Sutherlin, are Board Members of or employed by or associated with the enterprise referred to supra, and conducted or participated, directly or in-

directly, in the conduct of the enterprise's affairs, through a pattern of racketeering activity within the meaning of 18 U.S.C. Section 1962 (C); and, more particularly, committed extortion and interstate travel to aid extortion, by accepting fines and forfeitures or portions thereof in violation of 18 U.S.C. Sections 2, 1951, and 1952.

3.

With respect to question three (3), there are no additional wrongdoers.

4.

Plaintiff has been injured in his business and property by reason of defendants' violation of 18 U.S.C. Section 1962 (C), in that monies due and owing him have been unlawfully withheld depriving him of the funds necessary to post bond to secure his release from the false imprisonment, and hire an attorney to defend him in the malicious prosecution which has been brought against him.

Plaintiff has also been injured in his property by the loss of his job, with all the attendant benefits thereto, having been fired by Chief of Police, Robert Sutherlin, who has no authority to discharge an employee of the Greater New Orleans Expressway Commission.

Plaintiff has also been injured personally due to the actions and threats of defendants, acting as agents of the enterprise, causing severe mental anguish and emotional distress by putting him in a state of fear and apprehension, which, in turn, had a severe and detrimental effect upon his life and general well-being, impairing his ability to effectively manage his affairs.

5.

With respect to question 5 (a) and (b), plaintiff was arrested by the Causeway Police on August 15, 1996, and charged with violation of LSA-R.S. 14:67, Theft Over Five-Hundred ($500.00) Dollars. The arrest was under the direct supervision of co-defendant, Robert Sutherlin, Chief of Police, Greater New Orleans Expressway Com-

mission, who personally ordered plaintiff to be arrested and subsequently incarcerated. Plaintiff was arrested by the Causeway Police Department and transported to the St. Tammany Parish lock-up where he was falsely imprisoned and forced to post a Five ($5,000.00) Dollar bond to secure his release.

Question 5 (c) is not applicable to the instant matter.

With respect to question 5 (d), the alleged predicate acts relate to the enterprise and are all part of a common plan whereupon an illegal police-force was permitted to exist by the defendants, either directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activity within the meaning of 18 U.S.C. Section 1961 (1), (A) or (B) and (5), referred to, supra. Further, said police-force was enacted and operated in violation of numerous state statutes serving to supplement the predicate acts as complained of above. More particularly, the Causeway police are illegally commissioned by the superintendent of the Louisiana State Police where, as provided in LSA-R.S. 40:1379.1 (A), any person who receives a special officer's commission must display the need for statewide police powers including the power to arrest, and be bonded. This police power cannot be assumed; it must be specifically delegated. See, LSA- R.S. 40:984, entitled: Powers of Enforcement Personnel; LSA-R.S. 40:1379.1, entitled: Special Officers; Powers and Duties; Concealed Handgun Permit; LSA-R.S. 40: 1379, entitled Duties and Powers of Police Employees; LSA-R.S. 40:2402(1)(a)(b), entitled: Definition of Peace Officer; LSA-R.S. 40:1388, entitled: Contracts with Municipalities for Police Protection; LSA-R.S. 49:149.2, entitled: Capital Police Constituted as Police Officers; Bond; Jurisdiction; LSA-R.S. 34:1652.1, entitled: Port and Harbor Police; LSA- C. Cr. P. Art. 204, entitled: Execution of Warrant.

6.

With respect to question 6 (a), the alleged enterprise consists of the following individuals and entities: Ronald

Goux, Reed Ingram, Frank Simone, Richard Blanke, Hunter Wagner, Jr., Wilfred Griffin, Jr., Robert Sutherlin, The Greater New Orleans Expressway Commission, and the Parishes of Jefferson and St. Tammany.

With respect to question 6 (b), The Greater New Orleans Expressway Commission was created by the joining of Jefferson and St. Tammany Parish, to create this body corporate and politic, as an agency and instrumentality of the Parishes of Jefferson and St. Tammany for the objects and purposes to construct, operate and maintain a toll bridge or causeway and requisite approaches across Lake Pontchartrain. Said Commission also has the power to improve or extend the Expressway in such manner as may be directed by the Parishes.

Nowhere is the Greater New Orleans Expressway Commission authorized, either by charter or statute, to operate a police-force as detailed, supra. In so doing, said defendants have acted in conformity to an enterprise engaged in illegal activities as more fully described in paragraphs: One (1), Two (2), and Five (5).

With respect to question 6 (c), The Greater New Orleans Expressway Commission is a corporation whose sole stockholders are the Parishes of Jefferson and St. Tammany. The remaining defendants are Board Members of the Greater New Orleans Expressway Commission, with Ronald Goux as Chairman, Hunter Wagner, Jr., as General Manager, Wilfred Griffin as Assistant General Manager, and Reed Ingram, Frank Simone, and Richard Blanke as members. Robert Sutherlin is employed by the Greater New Orleans Expressway Commission as Chief of Police.

With respect to question 6 (d), all defendants are associated with the alleged enterprise in that they all knowingly and actively allowed the illegal police-force to exist and operate.

With respect to question 6 (e), it is alleged that the defendants make-up the enterprise itself, and are not to be considered individually.

With respect to question 6 (f), all defendants are perpetrators of the alleged racketeering activity.

7.

With respect to question Seven (7), the pattern of racketeering activity has merged into one entity where the Parishes of Jefferson and St. Tammany, The Greater New Orleans Expressway Commission, and its officers, members and employees as named supra, all acted in concert to maintain and operate an illegal police-force.

8.

With respect to question Eight (8), the purpose of the Greater New Orleans Expressway Commission is detailed in paragraph Six (6). The operation of the illegal police-force is a deliberate derogation from the enumerated purposes of the Greater New Orleans Expressway Commission.

9.

With respect to question Nine (9), the defendants have, by their actions of falsely accusing, illegally arresting and then, by terminating his employment, extorted plaintiff's retirement benefits by retaining them which inures to the benefit of the enterprise. Defendants further benefit from the operation of the enterprise by accepting fines and forfeitures or portions thereof as a direct result of the operation of the illegal police force.

10.

With respect to question Ten (10), the legislature of the State of Louisiana specifically limited the police powers of the Greater New Orleans Expressway Commission to toll violations by enacting LSA-R.S. 47:820.5.1, which

authorizes the issuance of a citation pursuant to LSA-R.S. 14:71.2, any other law enforceemnt activity has a chilling effect on interstate commerce where felony arrests are made and presumably innocent victims are detained.

11.

Question Eleven (11), is not applicable to the instant matter.

12.

Question Twelve (12), is not applicable to the instant matter.

13.

With respect to question Thirteen (13), Robert Sutherlin, Chief of Police, is employed by the enterprise, who is both the liable person and the entity under 18 U.S.C. Section 1962 (C).

14.

Question Fourteen (14), is not applicable to the instant matter.

15.

With respect to question Fifteen (15), plaintiff has been injured by the acts of defendants in that monies due and owing him have been unlawfully withheld; additionally, plaintiff had to secure funds necessary to post bond and to retain an attorney to defend him in the malicious prosecution which has been instituted. Furthermore, plaintiff now being unemployed, with the opportunity of future employment being lost, is at immediate risk of losing his family domicile.

16.

With respect to question Sixteen (16), but for the enterprises's violation of 18 U.S.C. 1962 (C), and in furtherance of the illegal obtaining and execution of a felony arrest warrant, by the illegal assumption of police power,

plaintiff would not have been injured as described in paragraph Fifteen (15).

17.

With respect to question Seventeen (17), the enterprise is liable unto plaintiff as follows: plaintiff was deprived of funds necessary to post bond to secure his release, and to pay money to hire an attorney, the loss of these funds causing property damage.

Plaintiff has sustained damage by reason of his job termination with the loss of all attendant benefits including, but not limited to, the loss of the opportunity to qualify for retirement benefits. Further, plaintiff has sustained damage in the form and substance of severe emotional distress and mental anguish due to the employment termination with loss of wages and benefits; and, emotional distress and mental anguish over the loss of his credibility and reputation in the community.

18.

With respect to question Eighteen (18), defendants violated 18 U.S.C. Section 1961 (1), (A), or (B), and (5), interstate travel and aid of the operation of an unauthorized and illegal police-force; and, 18 U.S.C. Section 1952 and 2, the execution of felony arrest warrants or the arrest of persons who committed a felony while such persons were traveling upon the Causeway in interstate travel.

19.

Question Ninteen (19), is not applicable in the instant matter.

20.

With respect to question Twenty (20), the Legislature of the State of Louisiana has specifically limited the police powers of the Greater New Orleans Expressway Commission to toll violations by enacting LSA- R.S. 47: 820.5.1, which only authorizes the issuance of citations pursuant

to LSA- R.S. 14: 71.2. As such, the continued operation of a police-force to accomplish any goal or mission other than enumerated in LSA- R.S. 47:820.5.1, is a violation of 18 U.S.C. Section 1962 (C), constituting a pattern of racketeering activity.

As per the Order of the Court entered November 7, 1996.

Respectfully submitted,

/s/ Stephen J. Caire
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[Filed Apr. 2, 1997]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 96-3571
Section "E"
Magistrate 2

CHARLES G. STUMPF, JR.

v.

GREATER NEW ORLEANS EXPRESSWAY COMMISSION, PARISH OF ST. TAMMANY, PARISH OF JEFFERSON, RONALD GOUX, REED INGRAM, FRANK SIMONE, RICHARD BLANKE, HUNTER WAGNER, JR, WILFRED GRIFFIN, JR, AND ROBERT SUTHERLIN

AMENDED COMPLAINT

NOW INTO COURT, through his undersigned counsel, comes plaintiff, Charles G. Stumpf, Jr., who in order to amend his complaint filed herein as ordered by the court, respectfully says that he desires to add the following by inserting the following paragraphs after paragraph 36 of his initial complaint:

36 A. The Parish of Jefferson and the Parish of St. Tammany (hereafter referred to as "Parishes") specifically intended that creditors not be required to pierce the corporate veil of the Greater New Orleans Expressway Commission and that the Parishes shall be bound by the actions of the Commission.

36 B. As part of its Trust Agreement for the benefit of the holders of revenue bonds both the Parishes and the Commission, as parties to that agreement, stated that ". . . The actions of the Commission in such matters shall be binding upon the Parishes. . ."

36. C. The Parishes specifically stated in the preamble to the Articles Of Incorporation of the Greater New Orleans Expressway Commission, expressly and not impliedly, that the Parishes were availing themselves of the provisions of the revised statutes of Louisiana to incorporate a joint Commission, a body of corporate and politic, *as an agency and instrumentality of the Parishes of Jefferson and St. Tammany* . . . specifically, the last paragraph of the preamble which precedes Article 1 of the Articles of Incorporation states:

"Who Declared, that availing themselves of the provisions of R.S. 33:1321-33:1332 they have united to create and they do by these presents contract, agree, bind, form, organize and constitute themselves and incorporate a joint Commission a body corporate and politic, as a agency and instrumentality of the Parishes of Jefferson and St. Tammany for the objects and purposes and under the conditions, covenants, stipulations and agreements of the following Articles of Incorporation, to wit:"

36 D. Article IV(3) of the Articles of Incorporation of the Greater New Orleans Expressway Commission provides in pertinent part:

> And that it is in the best interest of said Commission and said two Parishes; provided, however, that title to all such property shall be taken in the names of the Par-

ish of Jefferson and St. Tammany jointly, . . .

36 E. The Greater New Orleans Expressway Commission (hereafter referred to as simply "Commission") did in fact acquire immovable property in the names of the Parishes of Jefferson and St. Tammany jointly specifically, property located in the Parish of St. Tammany is owned in indivision by the Parishes of Jefferson and St. Tammany, and which purchases were made using funds belonging to the Commission.

36 F. Article IV(4) of the Articles of Incorporation of the Greater New Orleans Expressway Commission required the plans and specifications to be approved by the Parishes.

36 G. The Articles Incorporation of the Greater New Orleans Expressway Commission specifically Article IV (8) provides for the Commission to execute documents and incur obligations which are binding upon the Parishes and specifically states:

> "To execute in its corporate name, *jointly with the Parish of Jefferson and St. Tammany* (emphasis added), a Trust Agreement as security for any revenue bonds or refunding revenue bonds which may be issued *jointly by the Parishes* (emphasis added) payable from the income and revenues to be derived from the operation of the Expressway;"

36 H. Article IV(9) of the Articles of Incorporation of the Greater Ne Orleans Expressway Commission provides that the Commission shall enter into contracts which bind the Parishes and specifically provides:

"To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, subject to the same limitations, conditions and restrictions as may be provided by law *if such acts were being done by said two Parishes themselves*;" (emphasis added)

36 I. The Commission in fact issued refunding revenue bonds which are binding upon the Parishes and have also entered into contracts and agreements which are binding upon the Parishes.

36 J. Article IV (12) of the Articles of Incorporation of the Greater New Orleans Expressway Commission provides that the Commission shall acquire property in the name of the Parishes; and the Commission did in fact acquire immovable property in the name of the Parishes of Jefferson and St. Tammany who are owners in indivision of property located in St. Tammany Parish.

36 K. Article IV (15) of the Articles of Incorporation of the Greater New Orleans Expressway Commission provide for the Parishes to participate in the operations of the Commission and specifically state in pertinent part:

"To construct and reconstruct traffic circles, interchanges and grade separations at intersections of the Expressway . . . *as directed by the Parishes of Jefferson and St. Tammany* . . ." (emphasis added)

36 L. Article IV (17) specifically mandates that the Commission act in its corporate name but in doing so acts on behalf of the Parishes and provides in pertinent part:

> *"To act in its corporate name, but for and on behalf of the Parishes of Jefferson and St. Tammany, in doing of all acts and things necessary or convenient to carry out the powers and duties expressly granted or impliedly conferred by these Article of Incorporation. . ."* (Emphasis added)

36 M. Article IV of the Articles of Incorporation of the Greater New Orleans Expressway Commission specifically states, expressly and not impliedly, that the obligations of the Commission acting for and on behalf of said Parishes shall be valid and legally binding against the Parishes and provides in pertinent part:

> "The Commission shall have power to enter into all covenants, agreements and obligations . . . and obligations of the Commission, acting for and on behalf of said Parishes of Jefferson and St. Tammany, shall be and constitute valid and legally binding covenants, agreements and obligations of said Commission and said Parishes, jointly and severally, and shall be fully enforceable in any court of competent jurisdiction against said Commission, and the said Parishes, jointly and severally."

36 N. The Parishes of Jefferson and St. Tammany did not intend that the Greater New Orleans Expressway Commission be anything other than an agency and instrumentality of the Parishes of Jefferson and St. Tammany and that the said Parishes would participate in the activities of the Commission and the operation thereof as stated in its Articles of Incorporation while specifically stating in its Articles of Incorporation the intentions of the Parish of Jefferson and St. Tam-

many to be bound by the actions of the Commission; therefore, the Parishes of Jefferson and St. Tammany provided, expressly and not impliedly, that the corporate entity is to be disregarded so that the use of the corporate form would not require the creditors of the Greater New Orleans Expressway Commission to "pierce the corporate veil."

36 O. The Parishes of Jefferson and St. Tammany do in fact participate in the operation of the Greater New Orleans Expressway Commission as stated in its Articles of Incorporation and particularly in the operation of the police force of the Greater New Orleans Expressway Commission by allowing the operation of a police force as one of the operations conducted in connection with the trust agreement which it executed for the benefit of the holders of the bonds and, therefore, the Parishes are liable unto plaintiff for the damages complained of herein.

36 P. The Greater New Orleans Expressway Commission does in fact pay for services rendered on behalf of the Parishes directly; specifically, the Commission pays for professional services of design engineers for the construction, design and maintenance of roads and highways owned by the Parishes, as for instance, in the Parish of Jefferson the improvements to 17th Street as well as others.

36 Q. The Commission pays directly for professional services of design engineers and for improvements to roads and highways owned by the Parishes of Jefferson and St. Tammany which are located in the Parish of St. Tammany.

36 R. The payments made and referred to in the previous two paragraphs are made by the Commis-

sion directly without any declaration of dividends to the parish and come directly out of funds owned by the Greater New Orleans Expressway Commission, thus commingling the funds of the Greater New Orleans Expressway Commission with the funds and/or obligations of the Parishes.

WHEREFORE, the plaintiff, Charles G. Stumpf, Jr., prays that this amended complaint be filed and that, after due proceedings had, the judgment be entered against each of the defendants, jointly and severally, in favor of the plaintiff as prayed for in his original complaint.

Respectfully submitted,

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